

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 0:22-cv-61184-WPD

J.K., a minor, by and through her mother,
Natural guardian and next friend,
KAREN FISHER

Plaintiff,

vs.

CLASSICA CRUISE OPERATOR LTD., INC.,
a Foreign Profit Corporation,

Defendant.

COURT'S FINDINGS OF FACT AND CONCLUSIONS OF LAW

THIS CAUSE came before the Court during a two-day bench trial on October 24, 2023 and October 25, 2023. The Court has carefully considered the arguments of counsel, the evidence presented, and the live and deposition testimony provided during trial. The Court has also considered the credibility of the witnesses and is otherwise fully advised in the premises.

I. Findings of Fact

1. Plaintiff, J.K., is a minor resident of Jacksonville, Florida. She is proceeding in this lawsuit through her mother, natural guardian, and next friend, KAREN FISHER.
2. Defendant, CLASSICA CRUISE OPERATOR LTD., INC., is in the business of operating passenger cruise vessels, including the *Grand Classica*, and did so on the date of incident in this case, June 23, 2019.
3. J.K. was a seven-year-old passenger on the *Grand Classica* cruise ship on June 23, 2019. She was traveling with her mother, Karen Fisher; her mother's husband, Ephraim Wright;

her siblings Jaquan Washington, Markayla Stubbs, and minor J.K.2¹ and her stepbrother minor E.W.

4. The Fisher/Wright party had reserved and booked two cabins across the hall from each other on the same floor of the ship: one cabin was a suite style ocean-view without a bunkbed, and one cabin (where the incident occurred) contained a bed and two bunkbeds.
5. The cruise line has promulgated numerous policies and procedures regarding the assembly and use of bunkbeds in passenger cabins for the purpose of passenger safety.
6. One of the aforementioned policies and procedures is that the beds are to be assembled by crew members, as opposed to passengers.
7. Classica has a policy that it does not arrange the bunkbeds prior to guest arrival because some guests do not want to utilize the bunkbed aspect of the room.
8. When not in use, the bunkbeds are stored via a folding mechanism akin to a murphy bed.
9. Bunkbeds are arranged upon request, as not everyone who is booked in a bunkbed room decides to utilize the bunkbed.
10. When requested, bunkbeds are arranged usually during evening turn down service, as the bunkbeds take up considerable space in the cabin.
11. A sign is located on the exterior of the storage unit containing the beds advising passengers that the bunk beds are to be assembled by crewmembers, and that passengers should contact guest services in order to have the bunk beds set up:

¹ J.K.'s minor brother also has the same initials. He will be referred to as J.K.2, in order to distinguish the two minors.



12. If a passenger contacts guest services for any reason, including to request assistance with the bunkbeds, this contact is logged by the cruise line in its guest services records.
13. No call to guest services was made by anyone in the Fisher/Wright party to request to have the bunkbeds made. Defendant has no record of any request to guest relations to request for the bunkbed to be arranged.
14. If the request for a bunkbed set up is made directly to the cabin steward, there would not be any record made of the request.
15. Numerous crew members are stationed in the hallway where the passenger cabins are located. Additionally, other crewmembers come by the rooms daily to clean and also for turn down service. If one of these crewmembers is made aware that the bunkbeds need to be assembled, they will assemble it. When this is done, no call to guest services is needed, and so no notation is made in the guest services records.
16. The assembly process has several steps. First, an end table is removed from the wall to create extra floor space in the cabin. Then the full-size bed is moved away from the bunk-beds towards the door. This is to provide sufficient space so that (1) the bunkbeds may be folded out from their wall compartments, and (2) a ladder may be secured to the top bunk. After the bunkbeds are assembled, the ladder is secured to the upper bunk using hooks. The ladder appears to be metallic, with plastic-like hooks and a plastic-like protrusion on one side. Inside the plastic-like protrusion is a metal-like spike angled up

from the side protrusion. The purpose of the side protrusion with metal-like spike was never explained in the trial. The ladder is stored under the main bed when not in use.

17. When the Wright/Fisher family boarded the ship, they encountered considerable difficulty during the boarding process. They were delayed in boarding due to a mix up in the passenger badges provided to the children. The names did not match the pictures on the badges. Accordingly, the family was required to wait until new badges could be made. The delay may explain why there was some confusion as to the events surrounding their arrival at the two rooms on the fifth level.
18. When the Wright/Fisher family did board the ship, they were informed that their luggage was waiting for them in the hallway outside their cabins, but they should not enter their cabins until they were ready as they were being prepared by crew.
19. When the Wright/Fisher family was finally escorted to their cabins by a stewardess, they found their luggage in the hallway. Additionally, numerous crewmembers were present in the hallway.
20. Mr. Wright and Ms. Fisher began discussing sleeping arrangements, and Mr. Wright expressed confusion because there was only one bed, instead of three, in one of the rooms.
21. At some point, a crewmember had entered the cabin to set up the bunkbeds. A crewmember secured a ladder and assembled that ladder to the bunkbed.
22. After the bunkbeds were assembled, a crewmember informed the family members that the bunkbeds and cabins were ready for use.
23. A sign is affixed to the wall next to the upper bunk that states: "Please secure the ladder to the sidewall of the bunk bed using hook. Check the ladder if touching the floor and

stable. Hold the Bed Railing Before Climbing Up. Climb Facing the ladder, not back to it. Maximum Weight 200 lbs.”



24. Aside from this, no warnings or instructions were provided to J.K. or any of her family members regarding the use of the bunkbeds or ladder.
25. Karen Fisher and Ephraim Wright, Sr. did not check the ladder.
26. The ladder appeared to be secured.
27. J.K. had bunkbeds at home and had used the bunkbed ladder at her house without any problems.
28. Prior to the incident, J.K. was able to use the ladder without a problem.
29. On at least one occasion on the first day, J.K. jumped/slid off the bed from the top bunk without using the ladder while playing with her brother below.
30. Mr. Wright later reported that he had had a conversation with a crew member, who told Mr. Wright that the ladder had been improperly installed but that she (the crewmember) had identified and corrected the problem.
31. That night, J.K. slept on the top bunk. Her brother Jaquan slept on the bottom bunk. Mr. Wright also slept in the bunkbed room. There was no lack of supervision on the part of Plaintiff's parents.
32. No one other than J.K. used, moved, or contacted the ladder until the following morning.

33. The following morning, J.K. was the last family member to wake up and as she was descending the ladder to exit the bunkbed, the ladder began to fall backwards, causing J.K. to fall. As she fell, her leg was lacerated by a metal component protruding from the side of the ladder. It was an ugly wound.
34. There is a variation in testimony of the witnesses with regard to the amount of blood there was as a result of J.K.'s injury, but the amount of blood is not relevant to the determination of the extent of the injury and resulting permanent scar.
35. After J.K. fell, she was brought to the shipboard infirmary by her parents. J.K. was treated at the medical center through the application of 13 stitches.
36. When a passenger reports to the medical center with an injury, a shipboard investigation takes place.
37. During the course of that shipboard investigation, statements were taken of Mr. Wright and Ms. Fisher. Mr. Wright and Ms. Fisher stated in their statements that the ladder was improperly attached to the upper bunk by crewmembers.
38. Mr. Wright identified, in his statement, the conversation he had with the crewmember the prior day.
39. After the statements were taken, shipboard security personnel and other crewmembers from the housekeeping department accompanied Mr. Wright to the cabin.
40. It was then confirmed that the ladder had been improperly attached to the upper bunk. Specifically, it was determined that the bunk beds had not been properly assembled, because the end table had never been removed. Because the end table had not been removed, there was inadequate space to properly secure the ladder to the upper bunk. A smaller acute angle was necessary to secure the hooks to the top bunk.

41. Crewmembers then removed the end table and re-secured the ladder.
42. Classica does not have any prior claims, reports or complaints of similar incidents involving the bunkbed ladders onboard the *Grand Classica*.
43. Upon J.K.'s return home after the cruise, she received treatment from numerous doctors back home in the Jacksonville area for wound care. She has incurred medical bills in the amount of \$2,802.32.
44. Ms. Fisher performed numerous therapeutic massages with ointment designed to remove scar tissue, eliminate pain, and heal the area. The Court was able to view the nicely-healed scar in open court.
45. J.K. has been evaluated for a plastic surgery procedure to address the scar. This would be performed under general anesthesia and cost an estimated \$3,000 to \$5,000, but would not heal the scar completely. Neither her plastic surgeon nor the defense retained expert recommended the surgery.
46. There is no evidence of future medical expenses related to the scar. It is undisputed that it is not recommended that J.K. undergo a revision surgery because it would have a low probability of improving the scar.
47. There has been no recommendation for any further treatment or surgery. Her last report from her treating plastic surgeon states:

This scar has matured nicely and there is minimal residual hypertrophy. I do not feel surgery or injection would significantly improve the scar at this point. We reviewed scar massage techniques. I am encouraged that her scar is improving with scar massage. I have asked her to return in one year or as needed.
48. J.K. has experienced significant, and will continue to experience some, non-economic damages in the form of pain and suffering and humiliation as a result of the permanently

disfiguring scar, which is present in a sensitive area that is exposed when she wears bathing suits or some types of shorts or dresses.

49. In December of 2019, approximately six months after the incident, J.K. was diagnosed with an anxiety disorder.

50. While there was some testimony that J.K. has recently started attending counseling in the past two months, there was no evidence introduced as to the cost of that counseling and the expected timeframe for counseling to continue.

II. Conclusions of Law

1. This action is governed by the general maritime law of the United States. *Kermarec v. Compagnie Generale Transatlantique*, 358 U.S. 625 (1959); *Sorrels v. NCL (Bahamas) Ltd.*, 796 F.3d 1275, 1279 (11th Cir. 2015); *Plott v. NCL America, LLC*, 786 Fed. Appx. 199, 202 (11th Cir. 2019).

2. The elements of a negligence claim in a maritime are “(1) the defendant had a duty to protect the plaintiff from a particular injury; (2) the defendant breached that duty; (3) the breach actually and proximately caused the plaintiff’s injury; and (4) the plaintiff suffered actual harm.” *Chaparro v. Carnival Corp.*, 693 F.3d 1333, 1336 (11th Cir. 2012). A cruise ship owner owes passengers a duty of reasonable care under the circumstances. *See Kermarec v. Compagnie Generale Transatlantique*, 358 U.S. 625 (1959); *Sorrels*, 796 F.3d at 1280; *Everett v. Carnival Cruise Lines*, 912 F.2d 1355, 1358 (11th Cir. 1990); *Keefe v. Bahama Cruise Line, Inc.*, 867 F.2d 1318, 1322 (11th Cir. 1989).

3. Under general maritime law, the operator of a passenger cruise vessel owes passengers lawfully on board a duty of reasonable care for their safety. *Kermarec*, 358 U.S. at

632; *Keefe v. Bahama Cruise Line, Inc.*, 867 F.3d 1318, 1322 (11th Cir. 1989); *Sorreles*, 796 F.3d at 1279; *Plott*, 786 Fed. App'x at 202.

4. The vessel operator's duty of reasonable care includes a duty to protect passengers against risk-creating conditions of which it has actual or constructive notice by correcting the dangerous condition and adequately warning of the dangerous condition. *Keefe* 867 F.3d 1318 at 1322; *Plott*, 786 Fed. App'x at 202. The duty to correct dangerous conditions is distinct from any duty to warn. *Carroll v. Carnival Corp.*, 955 F.3d 1260, 1267-69 (11th Cir. 2020).

5. A carrier is not the insurer of the safety of its passengers. *Gayou v. Celebrity Cruises, Inc.*, No. 11-23359-CIV, 2012 WL 2049431, at *11 (S.D. Fla. June 5, 2012) (Scola, J), citing *Monteleone v. Bahama Cruise Line, Inc.* 838 F.2d 63, 65 (2d Cir. 1988).

6. Merely because an accident occurs, a carrier does not become liable to a passenger. *See id.* at 65; *Young v. Carnival Corp.*, 2011 WL 465366, *4 (S.D. Fla. 2011) (King, J) (“[t]here is a fallacy, which seems to be widely accepted, that for any personal injury, however caused, some person or instrumentality should be liable in damages. Such is not and has never been the law”).

7. Under federal law, an inference must be “reasonable.” *See Berbridge v. Sam's E., Inc.*, No. 17-14234, 2018 WL 1357372, at *3 (11th Cir. Mar. 16, 2018) citing *Daniels v. Twin Oaks Nursing Home*, 692 F.2d 1321, 1326 (11th Cir. 1982). A reasonable inference is one that a “reasonable and fair-minded [person] in the exercise of impartial judgment might draw from the evidence.” *Id.* Reasonable inferences may rest in part on conjecture, “for an inference by definition is at least partially conjectural.” *Id.*

8. Speculation or subjective expectations are insufficient for a plaintiff to meet his or her burden. *Cordoba v. Dillard's, Inc.*, 419 F.3d 1169, 1181 (11th Cir. 2005) (“Speculation does

not create a genuine issue of fact; instead, it creates a false issue, the demolition of which is a primary goal of summary judgment”).

9. Based upon the Court’s findings of fact, *see supra*, Plaintiff’s theory that the ladder was not secure and constituted a dangerous condition is a reasonable inference and is not based on rank speculation.

10. For a plaintiff to recover, the defendant must have had actual or constructive notice of the complained-of condition. *Everett*, 912 F.2d at 1357; *Monteleone*, 838 F.2d at 63–64.

11. Defendant had actual and/or constructive notice of the hazardous condition of the bunkbed ladder being set up improperly and therefore not properly secured to the top bunk. Defendant had actual notice because its own crewmembers had assembled the bunk and had personally seen its condition before informing the Plaintiff and her travel companions it was safe for use. Defendant further had constructive notice in the form of the safety policies and procedures requiring the removal of the end table to provide for sufficient space to secure the ladder, and the warning posted to the upper bunk stating the manner in which the ladder was supposed to be secured to the upper bunk. *Sorrels*, 796 F.3d at 1288 (posting warnings evidence of notice); *Carroll*, 955 F.3d at 1266. *Frasca v. NCL*, 654 Fed. App’x 949, 953-54 (11th Cir. 2016). On the issue of actual notice, *see Haiser v. MSC Cruises (USA) Inc.*, 2019 U.S. Dist. LEXIS 170754, 2019 WL 4693200, at *5 (S.D. Fla. 2019) (crewmembers in close proximity to spilled water sufficient to establish notice).

12. “[F]ederal courts need not even reach the defendant’s actual or constructive notice of a risk-creating condition if they determine that condition was an open and obvious danger. The duty to warn in the maritime tort context extends to only known dangers which are not apparent and obvious.” *Smith v. Royal Caribbean Cruises, Ltd.*, 620 F. App’x 727, 730 (11th

Cir. 2015). Some conditions are so obvious that they can be held as a matter of law not to constitute a hidden dangerous condition. *Luby v. Carnival Cruise Lines, Inc.*, 633 F. Supp. 40, 42 (S.D. Fla.), *aff'd sub nom. Luby v. Carnival Cruise Lines*, 808 F.2d 60 (11th Cir. 1986). A ship owner may assume a passenger will perceive that which would be obvious to him upon the ordinary use of his own senses and is not required to provide notice or warning of an obvious condition. *Id.*

13. If the ladder visually appeared to be in place but was not properly secured onto the bunkbed, such a condition would not have been open and obvious so as to obviate Defendant's failure to warn.

14. Defendant breached its duty of reasonable care by failing to assemble the bunk beds in accordance with its own policies and procedures, specifically by failing to remove the end table and failing properly to secure the ladder to the top bunk. *Sorreles*, 796 F.3d at 1288; *Carroll*, 955 F.3d at 1266. *Frasca v. NCL*, 654 Fed. App'x 949, 953-54 (11th Cir. 2016); *Haiser v. MSC Cruises (USA) Inc.*, 2019 U.S. Dist. LEXIS 170754, 2019 WL 4693200, at *5 (S.D. Fla. 2019).

15. Defendant further breached its duty of reasonable care by failing adequately to warn the Plaintiff of the danger posed by the inadequately secured ladder. *Sorreles*, 796 F.3d at 1288; *Carroll*, 955 F.3d at 1266. *Frasca v. NCL*, 654 Fed. App'x 949, 953-54 (11th Cir. 2016); *Haiser v. MSC Cruises (USA) Inc.*, 2019 U.S. Dist. LEXIS 170754, 2019 WL 4693200, at *5 (S.D. Fla. 2019).

16. Under general maritime law, "a plaintiff may obtain judgment for the full amount against any and all joint tortfeasors without regard to percentage of fault." *Id.*, citing *Ebanks v. Great Lakes Dredge & Dock Co.*, 688 F.2d 716 (11th Cir. 1982). *See also Edmonds v. Compagnie Generale Transatlantique*, 443 U.S. 256 (1979) (same). Accordingly, liability is not

reduced by the comparative fault of any non-party or entity aside from the minor Plaintiff herself. *Wiegand v. Royal Caribbean Cruises*, 473 F.Supp.3d 1348, 1351 (S.D. Fla. 2020) *citing* *Groff v. Chandris, Inc.*, 835 F.Supp. 1408, 1410 (S.D. Fla. 1993).

17. The sole cause of the incident was not J.K.'s parents' failure to supervise J.K.'s using the bunkbed and bunkbed ladder.

18. Plaintiff's incident was not caused by her own failure to exercise reasonable care for her safety in using the bunkbed ladder. She was properly facing the bunkbed when she tried to climb down the ladder before it fell backwards.

19. As a direct and proximate result of Defendant's breaches of its duty of reasonable care as detailed above, Plaintiff has sustained compensatory damages including medical bills, pain, suffering, mental anguish, disability, inconvenience, and inability to enjoy life, and will reasonably sustain in the future disability, mental anguish, inconvenience, and inability to enjoy life.

20. The Court finds the amount of Plaintiff's past and future compensatory damages to be:

- a. Medical expenses (past): \$2,802.32²
- b. Pain and suffering (past): \$40,000.00³
- c. Pain and suffering (future): \$20,000.00

² In determining the amount of past medical expense damages, the Court has taken into consideration all relevant evidence offered by the parties pursuant to the Eleventh Circuit's ruling in *Higgs v. Costa Crociere S.P.A. Co.*, 969 F.3d 1295, 1317 (11th Cir. 2020) ("[W]e hold that the appropriate measure of past medical expense damages in a maritime tort case is the amount determined to be reasonable by the jury upon its consideration of all relevant evidence, including the amount billed, the amount paid, and any expert testimony and other relevant evidence the parties may offer.").

³ In a similar context (an 11-year-old female child who ran through a sliding glass door "suffered no functional disability from the accident, and the permanent scar is not visible except when she wears a bikini."), a Florida appellate court held that a jury award of \$4,000 for the child's damages was legally adequate. *See Hannabass v. Fla. Home Ins. Co.*, 412 So. 2d 376, 377 (Fla. 2nd DCA 1981). The Court has taken into account that that damages award was over forty (40) years ago.


TOTAL DAMAGES: \$62,802.32

III. Conclusion

1. Based upon the foregoing findings of fact and conclusions of law, judgment shall be entered in favor of Plaintiff J.K., a minor, by and through her mother, natural guardian and next friend, KAREN FISHER and against Defendant CLASSICA CRUISE OPERATOR LTD. INC. on Plaintiff's claim for maritime negligence in the amount of \$77,802.32.

2. Pursuant to Federal Rule of Civil Procedure 58(a), the Court shall enter a separate final judgment.

DONE AND ORDERED in Chambers at Ft. Lauderdale, Broward County, Florida, this 26th day of October 2023.


WILLIAM P. DIMITROULEAS
United States District Judge

Copies furnished to:
Counsel of record